

**Fountain Lodge, Inc. and United Food and Commercial Workers Union, Local No. 210**

**Patio Lodge, Inc. and United Food and Commercial Workers Union, Local No. 210. Cases 15-CA-8981 and 15-CA-8982**

30 March 1984

**DECISION AND ORDER**

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND DENNIS

Upon charges filed by the Union 17 May 1983, the General Counsel of the National Labor Relations Board issued a consolidated complaint 24 June 1983 against Fountain Lodge, Inc. and Patio Lodge, Inc., the Respondents, alleging that they have violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to meet with the Union for collective-bargaining purposes and insisting instead that bargaining take place by mail exchange of proposals. On 5 July 1983 the Respondents filed a joint answer admitting all the complaint allegations except that alleging that their conduct constituted an unfair labor practice.

On 28 July 1983 the General Counsel filed a Motion for Summary Judgment. On 15 August 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents did not file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment shall be rendered if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."<sup>1</sup> The Respondents have admitted the factual allegations of the complaint. We conclude that the General Counsel's Motion for Summary Judgment should be granted because the uncontroverted facts disclose that the Respondents have violated the Act.

The Union has been the collective-bargaining representative of a unit of certain nonprofessional employees at Fountain Lodge's Baton Rouge, Louisiana facility, and of a similar unit at Patio Lodge's Baton Rouge, Louisiana facility, since 1 January

1981 and has been recognized as such since 15 June 1982.

Since about 1 November 1982 the Union has requested the Respondents to meet and bargain collectively with it as the representative of the employees in the units in question. The Respondents have refused to meet with the Union, insisting that bargaining initially take place by a mail exchange of proposals. In their answer, the Respondents state: "[The Respondents] acknowledge that they have insisted on the preliminary bargaining being done by the exchange of contract proposals until it appears that the parties have reached some agreements and are at a point where face to face meeting would serve a purpose."

Section 8(d) of the Act defines "collectively bargaining" as "the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . ." The Board has held, "[i]t is elementary that collective bargaining is most effectively carried out by personal meetings and conferences of parties at the bargaining table," and that "[i]ndeed, the Act imposes this duty to meet." *U.S. Cold Storage Corp.*, 96 NLRB 1108 (1951), *enfd.* 203 F.2d 924 (5th Cir. 1953). The Fifth Circuit, upholding the Board, noted that the Act's 8(d) requirement "is not satisfied by merely inviting the union to submit any proposition they have to make in writing where either party seeks a personal conference." 203 F.2d at 928. Accord: *Alle Arecibo Corp.*, 264 NLRB 1267, 1273 (1982), stating that an employer "may not insist that negotiations be conducted over the phone or by mail."

Because the Respondents admit their refusal to meet and bargain with the Union, we find that they have violated Section 8(a)(5) and (1) of the Act as alleged. We therefore grant the General Counsel's Motion for Summary Judgment.

**FINDINGS OF FACT**

**1. JURISDICTION**

The Respondents, both Louisiana corporations, each operate nursing homes. During the 12 months preceding the complaint's issuance, each derived gross revenues in excess of \$100,000, and each purchased and received at its Baton Rouge, Louisiana facility, products, goods, and materials valued in excess of \$10,000 from other enterprises located within the State of Louisiana, each of which, in turn, had received these products, goods, and materials directly from points outside the State of Louisiana. We find that the Respondents are employers engaged in commerce within the meaning of Sec-

<sup>1</sup> See *Lake Charles Memorial Hospital*, 240 NLRB 1330 (1979).

tion 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Units and the Union's Representative Status*

The following employees of Fountain Lodge constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All aides, nursing assistants, orderlies, dietary employees, housekeeping employees, ward clerks, and maintenance employees employed by Fountain at its Baton Rouge, Louisiana, facility; excluding all office clerical employees, professional employees, registered nurses, licensed practical nurses, guards and supervisors as defined in the Act.

The following employees of Patio Lodge constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full time and regular part-time employees including all aides, orderlies, dietary employees, housekeeping employees, maintenance employees, ward clerks; excluding registered nurses, licensed practical nurses, office clerical employees, guards and supervisors as defined in the Act.

Since about 1 January 1981 the Union has been the designated exclusive collective-bargaining representative of the employees in each unit above, and the Respondents respectively have recognized the Union as such since 15 June 1982.

### B. *The 8(a)(5) and (1) Violations*

Since about 1 November 1982 the Respondents, despite the Union's requests, have refused to meet and bargain with the Union, as the exclusive representative of the employees in the respective units described in section II,A, for collective-bargaining purposes and have insisted instead that bargaining take place by mail exchange of proposals. Accordingly, we find that the Respondents, by such conduct, have violated Section 8(a)(5) and (1) of the Act.

## CONCLUSIONS OF LAW

By refusing, since about 1 November 1981, to meet and bargain with the Union, upon the Union's request, as the exclusive collective-bargaining representative of employees in the respective units described in section II,A, the Respondents have en-

gaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

## ORDER

A. The National Labor Relations Board orders that the Respondent, Fountain Lodge, Inc., Baton Rouge, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to meet and bargain with United Food and Commercial Workers Union, Local No. 210, as the exclusive bargaining representative of the employees in the bargaining unit described in paragraph 2(a) below.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All aides, nursing assistants, orderlies, dietary employees, housekeeping employees, ward clerks, and maintenance employees employed by Fountain at its Baton Rouge, Louisiana, facility; excluding all office clerical employees, professional employees, registered nurses, licensed practical nurses, guards and supervisors as defined in the Act.

(b) Post at its facility in Baton Rouge, Louisiana, copies of the attached notice marked "Appendix A."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive

<sup>2</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

B. The National Labor Relations Board orders that the Respondent, Patio Lodge, Inc., Baton Rouge, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to meet and bargain with United Food and Commercial Workers Union, Local No. 210, as the exclusive bargaining representative of the employees in the bargaining unit described in paragraph 2(a) below.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full time and regular part-time employees including all aides, orderlies, dietary employees, housekeeping employees, maintenance employees, ward clerks; excluding registered nurses, licensed practical nurses, office clerical employees, guards and supervisors as defined in the Act.

(b) Post at its facility in Baton Rouge, Louisiana, copies of the attached notice marked "Appendix B."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

<sup>3</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

#### APPENDIX A

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to meet and bargain with United Food and Commercial Workers Union, Local No. 210, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All aides, nursing assistants, orderlies, dietary employees, housekeeping employees, ward clerks, and maintenance employees employed by Fountain at its Baton Rouge, Louisiana, facility; excluding all office clerical employees, professional employees, registered nurses, licensed practical nurses, guards and supervisors as defined in the Act.

FOUNTAIN LODGE, INC.

#### APPENDIX B

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

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WE WILL, on request, meet and bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full time and regular part-time employees including all aides, orderlies, dietary employ-

ees, housekeeping employees, maintenance employees, ward clerks; excluding registered nurses, licensed practical nurses, office clerical employees, guards and supervisors as defined in the Act.

PATIO LODGE, INC.